

## REQUEST FOR COUNCIL ACTION

**SUBJECT:** Authorization of Eminent Domain Proceedings.

**SUMMARY:** City staff is prepared to construct a City Council approved project to widen 5600 West Street between 6200 and 7000 South, but have not been able to acquire all of the necessary property. Therefore, City staff is proposing to acquire the property through the use of eminent domain, if necessary.

**FISCAL  
IMPACT:** The appraised value of the property is \$520,000.00, which has already been paid to the property owner in exchange for City occupancy, but the property owner is seeking additional compensation well beyond the appraised value prior to conveying the property to the City.

**STAFF RECOMMENDATION:**

Staff recommends approval.


**MOTION RECOMMENDED:**

"I move to adopt Resolution No. 14-225, authorizing and directing the Interim City Manager and the City Attorney, on behalf of the City:

1. To acquire, in the name of the City, title to the Property as set forth herein, by purchase if a reasonable final purchase price can be negotiated, or by eminent domain proceedings in accordance with Utah law.
2. To prepare and prosecute such proceedings in the proper court having jurisdiction thereof as is necessary for such acquisition.
3. To use the services of outside counsel as necessary to accomplish these directives."

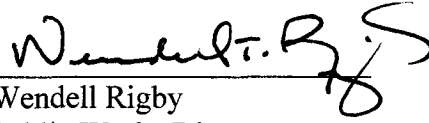
Roll Call vote required

**Prepared by:**



David Clemence  
Real Estate Services Manager

**Recommended by:**



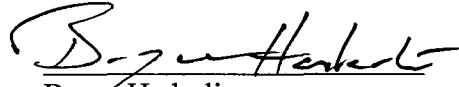
Wendell Rigby  
Public Works Director

**Reviewed as to legal sufficiency:**



Jeffrey Robinson  
City Attorney

**Recommended by:**



Bryce Haderlie  
Interim City Manager

**BACKGROUND DISCUSSION:**

The City of West Jordan has a City Council approved and budgeted road project on 5600 West Street, between 6200 South and 7000 South. Among other things, the project consists of improving the City's utility systems and widening the road from two lanes to five lanes. This project is a joint project between West Jordan and West Valley City, together with UDOT oversight since much of the project has been funded through federal aid.

In order to accomplish the best and safest design for the residents who use the neighborhood, and for the general public at large, during the design phase it was discovered that the City would need to acquire all of the property owned by Williamsburg Holding Development Company, LLC (Williamsburg) within the project boundary.

On October 8, 2013, City staff commissioned an MAI certified appraisal on the Williamsburg property, which valued the property at \$520,000.00. Staff then submitted a purchase offer to Williamsburg in January 2014, offering to purchase the property for the full appraised value. Williamsburg rejected the City's offer and is unwilling to sign the necessary deed based on the appraised value. However, in an effort to keep the project on schedule, on April 29, 2014, Williamsburg and the City entered into a Right of Occupancy Agreement whereby Williamsburg allowed the City to permanently occupy the property in exchange for the appraised value of \$520,000.00, which was paid on May 1, 2014.

The Right of Occupancy Agreement also states, in part,

*“If a satisfactory settlement cannot be agreed upon, West Jordan will, upon notice from the Property Owner that the amount of compensation offered and/or other proposed settlement terms are not acceptable, or at its own election, proceed at once to commence and diligently prosecute a condemnation proceeding in the appropriate court for a judicial determination of such compensation.”*

After attempting to negotiate with the property owner for the past several months, it has become apparent that the parties are at an impasse. Therefore, City staff recommends that the City Council authorize eminent domain proceedings consistent with the intent of the parties, which is to submit this issue before the appropriate court for a judicial determination since a negotiated settlement could not be reached.

**Attachments:**

Resolution

Exhibit “A” (the “Property”)

Exhibit “B” (the “Appraisal Summary”)

Property Reference Map

**THE CITY OF WEST JORDAN, UTAH**  
A Municipal Corporation

RESOLUTION NO. 14-225

**A RESOLUTION AUTHORIZING EMINENT DOMAIN PROCEEDINGS TO  
ACQUIRE PROPERTY OWNED BY WILLIAMSBURG HOLDING  
DEVELOPMENT COMPANY, LLC**

Whereas, the City of West Jordan, Utah, a municipal corporation and political subdivision of the State of Utah, is authorized to acquire private property for public use through the exercise of eminent domain; and

Whereas, the City of West Jordan, Utah, has adopted Master Plans identifying 5600 West Street as an arterial street, wherein master planned utilities such as water, storm drain and sanitary sewer will also be located; and

Whereas, 5600 West Street between 6200 South and 7000 South is currently a two lane road with substandard City utilities, so it has been determined that widening the road and improving the City utility systems is necessary to the health, safety and welfare of the public; and

Whereas, the West Jordan City Council has budgeted funding for the 5600 West Street, 6200 South to 7000 South Road Project (the "Project"); and

Whereas, West Jordan City and West Valley City entered into an agreement to jointly fund and construct the Project necessary to serve the public good; and

Whereas, West Jordan City has also received federal funding to construct the Project necessary to serve the public good; and

Whereas, the Project will affect real property owned by Williamsburg Holding Development Company, LLC (Williamsburg), located at approximately 6632 South 5600 West and 6732 South 5600 West, West Jordan, Utah 84081, which is more particularly described in Exhibit "A", attached hereto and by this reference incorporated herein (the "Property"); and

Whereas, on approximately October 8, 2013, City staff obtained an appraisal on the Property from Integra Realty Resources, a summary of which is attached hereto and by this reference incorporated herein as Exhibit "B" (the "Appraisal Summary"); and

Whereas, on or about January 23, 2014, City staff mailed a written offer to pay the property owner the appraised value for the Property to be acquired, which included payment for the land, private improvements, such as trees, fences, irrigation facilities, etc., and severance damages; and

Whereas, after several weeks of unsuccessful negotiations, according to industry practice and within City guidelines, on April 29, 2014, Williamsburg and the City entered into a Right of Occupancy Agreement whereby Williamsburg allowed the City to permanently occupy the property in exchange for the appraised value of \$520,000.00, which was paid on May 1, 2014; and

Whereas, after several months of additional negotiations the parties have reached an impasse in their attempt to negotiate a purchase and sale of the Property; and

Whereas, the City Council finds and determines that it is in the public interest and necessity to finalize the City's acquisition of the Property for construction of the Project in accordance with its Capital Facilities Plan.

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST JORDAN, UTAH:

*Section 1.* The West Jordan City Council finds and determines that the public interest and necessity require the City's final acquisition the Property, for construction of a public facility and for other lawful and legitimate public purposes.

*Section 2.* The Property to be affected by the action taken in Section 1, above, is owned by Williamsburg Holding Development Company, LLC, and is located at approximately 6632 South 5600 West and 6732 South 5600 West, West Jordan, Utah 84081, and is more particularly described in the Salt Lake County Assessor's Office as Tax Parcel Numbers 20-23-427-006-0000 and 20-23-430-013-0000.

*Section 3.* The proposed location of the public improvements is planned and located in a manner which will be most compatible with the greatest public good and the least private injury.

*Section 4.* The City Manager and the City Attorney are directed, on behalf of the City:

1. To acquire, in the name of the City, title to the Property as set forth herein, by purchase if a reasonable final purchase price can be negotiated, or by eminent domain proceedings in accordance with Utah law.
2. To prepare and prosecute such proceedings in the proper court having jurisdiction thereof as is necessary for such acquisition.
3. To use the services of outside counsel as necessary to accomplish these directives."

*Section 5.* This resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah this 3<sup>rd</sup> day of December, 2014.

CITY OF WEST JORDAN

ATTEST:

By: \_\_\_\_\_  
KIM V. ROLFE, Mayor

MELANIE S. BRIGGS, MMC  
City Clerk/Recorder

### Voting by the City Council

"AYE"

"NAY"

Council Member Jeff Haaga  
Council Member Judy Hansen  
Council Member Chris McConnehey  
Council Member Chad Nichols  
Council Member Ben Southworth  
Council Member Justin D. Stoker  
Mayor Kim V. Rolfe

[illegible][illegible]

**Exhibit "A"**  
**(the "Property")**

Parcel 1:

Beginning at a point which is North 0°07'06" East 1210.74 feet and South 89°54'15" West (Record = South 89°52'51" West) 7.00 feet from the Southeast corner of Section 23, Township 2 South, Range 2 West of the Salt Lake Base and Meridian, said point being the Northeast corner of Lot 34, Discovery Heights Subdivision Phase 1, according to the official plat thereof filed on September 9, 1997, under Entry Number 6735077, in Book 97-9P of Plats, at Page 276, in the office of the Salt Lake County Recorder; thence North 0°07'06" East 1013.36 feet along the Westerly right of way line of 5600 West Street as depicted on the plat of Suncrest Ridge No. 1 Subdivision, according to the official plat thereof filed on July 21, 1999, under Entry Number 7418351, in Book 99-7P of Plats, at Page 198, in the office of the Salt Lake County Recorder; thence Northwesterly along a 15.00 foot radius curve to the left 23.62 feet, with a central angle of 90°14'15", the chord of which bears North 45°00'02" West 21.26 feet; thence South 89°52'51" West 134.94 feet, more or less, to the Northeast corner of Lot 60 of said Suncrest Ridge No. 1 Subdivision; thence South 0°07'06" West 1028.36 feet, more or less, to the Northwest corner of Lot 34 of said Discovery Heights Subdivision Phase 1; thence North 89°54'15" East along the North line of said Lot 34, a distance of 150.00 feet, more or less, to the point of beginning.

The foregoing affects a portion of Salt Lake County Parcel No.: 20-23-430-013.

Parcel 2:

Beginning at a point which is South 0°07'06" West 100.90 feet (Record = 100 feet) and South 89°52'51" West 7.00 feet from the East Quarter corner of Section 23, Township 2 South, Range 2 West of the Salt Lake Base and Meridian; thence South 0°07'06" West 250.06 feet along the Westerly right of way line of 5600 West Street as depicted on the plat of Suncrest Ridge No. 1 Subdivision, according to the official plat thereof filed on July 21, 1999, under Entry Number 7418351, in Book 99-7P of Plats, at Page 198, in the office of the Salt Lake County Recorder; thence Southwesterly along a 15.00 foot radius curve to the right 23.50 feet, with a central angle of 89°45'45", the chord of which bears South 44°59'59" West 21.17 feet; thence South 89°52'51" West 135.06 feet, more or less, to the Southeast corner of Lot 81 of said Suncrest Ridge No. 1 Subdivision; thence North 0°07'06" East along the East line of said Lot 81 a distance of 265.00 feet, more or less, to the Northeast corner thereof; thence North 89°52'51" East 150.00 feet, more or less, to the point of beginning.

The foregoing affects a portion of Salt Lake County Parcel No.: 20-23-427-006.

Williamsburg Holding Land Discounted Cash Flow Analysis							
		Month 0	Month 1	Month 2	Month 3	Month 4	Month 5
Assumptions							
Inventory							
Lots Available		5	5	4	3	2	1
Absorption							
Lot Sales			1	1	1	1	1
Total Absorption							
Total Units Remaining			4	3	2	1	0
Retail Values							
Annual Appreciation Rate		3.0%		3.0%	3.0%	3.0%	3.0%
Value per Lot		\$142,100	\$142,455	\$142,811	\$143,168	\$143,526	\$143,885
Cost Assumptions							
Annual Cost Inflation Rate		3.0%		3.0%	3.0%	3.0%	3.0%
Construction Cost per Lot		\$25,000	\$25,063	\$25,125	\$25,188	\$25,251	\$25,314
Holding Cost per Lot		\$1,779	\$1,783	\$1,788	\$1,792	\$1,797	\$1,801
Marketing Costs		6.0%					
Closing Costs		1.0%					
Discounting							
Annual Discount Rate		0.00%					
Discount Rate per Month		0.00%					
Income							
Revenue from Lot Sales			\$142,455	\$142,811	\$143,168	\$143,526	\$143,885
Gross Sales Revenue			\$142,455	\$142,811	\$143,168	\$143,526	\$143,885
Costs							
Marketing/Commissions			\$8,547	\$8,569	\$8,590	\$8,612	\$8,633
Closing Costs			\$1,425	\$1,428	\$1,432	\$1,435	\$1,439
Lot Construction Costs			\$25,063	\$25,125	\$25,188	\$25,251	\$25,314
Lot Holding Costs			\$7,134	\$5,364	\$3,585	\$1,797	
Total Costs			\$42,168	\$40,486	\$38,795	\$37,095	\$35,386
Net Sale Proceeds			\$100,287	\$102,326	\$104,374	\$106,432	\$108,499
Present Value			\$100,287	\$102,326	\$104,374	\$106,432	\$108,499
Net Present Value		\$521,918					
Rounded		\$520,000					

EXHIBIT "B"  
(the "Appraisal Summary")



## Aerial Photo

